

BEFORE THE  
**Federal Communications Commission**

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

Petition of SBC Communications Inc.	)	
for Forbearance of Structural Separation	)	CC Docket No. 97-172
Requirements and Request for Immediate	)	DA 99-2718
Interim Relief in Relation to the Provision of	)	
Nonlocal Directory Assistance Services	)	
	)	

**COMMENTS OF EXCELL AGENT SERVICES, L.L.C.**

Excell Agent Services, L.L.C. ("Excell"), by its attorneys, hereby files its comments in response to the Public Notice seeking comment on SBC Communications Inc.'s supplement to its petition for forbearance filed in CC Docket No. 97-172.<sup>1</sup> SBC Communications, Inc. ("SBC"), on behalf of its Bell operating company ("BOC") subsidiaries, Ameritech, Nevada Bell and Southwestern Bell Telephone Company ("SWBT"), petitioned for forbearance from the section 272 separate affiliate requirements in connection with its provision of national directory assistance ("DA") services.<sup>2</sup> The SBC Supplement has not affected Excell's position as stated in

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<sup>1</sup> See Pleading Cycle Extended to Allow Comment on SBC Clarification and Supplement to its Petition for Forbearance for National Directory Assistance, Public Notice, CC Docket No. 97-172, DA 99-2718 (rel. Dec. 3, 1999); see also SBC Communications Inc.'s Clarification and Supplement to its Petition for Forbearance Filed on November 2, 1999 in CC Docket No. 97-172 (filed Nov. 19, 1999) ("SBC Supplement").

<sup>2</sup> See Petition of SBC Communications, Inc. for Forbearance of Structural Separation Requirements and Request for Immediate Interim Relief in Relation to the Provision of Nonlocal Directory Assistance Services, CC Docket No. 97-172 (filed Nov. 2, 1999) ("SBC Petition"); 47 U.S.C. § 272.

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Excell's comments to the SBC Petition.<sup>3</sup> To summarize, Excell's Comments state that the SBC Petition does not demonstrate that SBC's BOC subsidiaries are entitled to forbearance from the nondiscrimination requirements of section 272 of the Communications Act of 1934, as amended (the "Act"). The new information provided in the SBC Supplement does not bolster SBC's position that its subsidiaries are entitled to forbearance from the application of section 272 at this time.

In the NDA Order decided this past September,<sup>4</sup> the FCC decided to forbear from applying the separate affiliate requirements of section 272 to US WEST as long as US WEST adheres to four conditions retained under section 272(c)(1).<sup>5</sup> These conditions were imposed to assure the FCC that US WEST's charges, practices, classifications, and regulations with respect to non-local DA would be just and reasonable, and not unjustly or unreasonably discriminatory. As noted in Excell's Comments, the SBC Petition did not propose or suggest that its BOCs will comply with the non-discrimination conditions. In fact, in SBC's reply filed in this forbearance

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<sup>3</sup> See Comments of Excell to Bell Atlantic South, BellSouth and SBC Petitions for National Directory Assistance in CC Docket No. 97-172 (filed Nov. 29, 1999) ("Excell's Comments").

<sup>4</sup> See Petition of US WEST Communications, Inc. for a Declaratory Ruling Regarding the Provision of National Directory Assistance, Petition of US WEST Communications, Inc. for Forbearance; The Use of N11 Codes and Other Abbreviated Dialing Arrangements, Memorandum Opinion and Order, CC Docket Nos. 97-172 and 92-105 (rel. Sept. 27, 1999) ("NDA Order").

<sup>5</sup> Under the nondiscrimination conditions, a BOC must: (1) make available to unaffiliated entities all of the in-region directory listing information it uses to provide region wide DA service at the same rates, terms, and conditions it imputes to itself; (2) make changes to its cost allocation manual to reflect this imputation; (3) make the directory listing information of the customers of independent and competitive local exchange carriers ("LECs") operating in its region available to unaffiliated entities if the BOC uses the same information in its provision of non-local DA service; and (4) update and maintain the directory listing information it provides to unaffiliated entities in the same manner it updates and maintains the directory listing information it uses in the provision of non-local DA service. Id. at 37.

proceeding,<sup>6</sup> SBC confirms that it refuses to comply with some of these conditions. For instance, SBC states that where an “SBC BOC acquires DA listings from other entities through separate business arrangements to supplement its DA database, the BOC should not have an obligation to provide non-discriminatory access to these listings.”<sup>7</sup> However, under the NDA Order the SBC BOC would be required to make all in-region listings, including those of customers of independent and competitive LECs operating in the SBC BOC’s region, available to all unaffiliated entities regardless of the “arrangements” the BOC has made to compile these listings.<sup>8</sup> The non-discrimination condition that SBC proposes to thwart was imposed because the BOCs, due to their dominant position in the local exchange marketplace, are able to produce superior compilations of listings in their regions than can other DA providers.<sup>9</sup>

Moreover, neither SBC’s Reply or the SBC Supplement adds facts to the record indicating that the SBC BOC subsidiaries comply with the four non-discrimination provisions in paragraph 37 of the NDA Order. Indeed, the SBC Supplement actually provides more proof that the SBC BOCs’ have been violating section 271 and 272 of the Act. The SBC Supplement lists the dates that the SBC BOC subsidiaries began to provide national directory assistance in their respective regions.<sup>10</sup> In a recent order addressing a complaint lodged by MCI Tele-

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<sup>6</sup> Reply of SBC Communications Inc. to Comments Filed by INFONXX, Inc., Teltrust, Inc., AT&T Corp., Excell Agent Services, L.L.C., and MCI Worldcom, Inc. in CC Docket No. 97-172 (filed Dec. 8, 1999) (“SBC’s Reply”).

<sup>7</sup> Id. at 2.

<sup>8</sup> NDA Order, para. 37 (stating that “if US WEST uses the directory listing information of the customers of independent and competitive LECs operating in its region in its provision of nonlocal directory assistance, it must make such information available to unaffiliated entities.”).

<sup>9</sup> See NDA Order, para. 35. SBC’s Reply suggests that any other provider can negotiate and acquire listing information from other entities in the same manner as the BOCs but the truth is that the BOCs’ dominant position in the local exchange marketplace enables them to maintain databases with an accuracy rate far superior to any independent DA provider.

<sup>10</sup> SBC Supplement, at 1.

communications Corporation,<sup>11</sup> the FCC determined that the US WEST has been in violation of section 272(a)(2)(B)(i), the separate affiliate requirement, from the time it began to offer non-local directory assistance services until the date the NDA Order became effective.<sup>12</sup> Also, the FCC determined that Ameritech continues to be in violation of the separate affiliate requirement until it either begins providing non-local directory assistance service through a separate affiliate or the FCC grants Ameritech forbearance from the section 272 separate affiliate requirement.<sup>13</sup> Thus, the dates provided in the SBC Supplement point to the exact date each of the SBC BOCs began to violate section 272(a)(2)(B)(i). Furthermore, SBC's BOC subsidiaries continue to violate section 272 each day they provide national directory assistance on an integrated basis while the SBC Petition remains pending.

The SBC Supplement also demonstrates that SWBT and Pacific Bell have violated Section 271 of the Act by providing non-local DA using the information storage facilities of other entities. The SBC Supplement references the contract SWBT and Pacific Bell signed with Nortel networks "to purchase and fully own the facilities that will contain the nonlocal directory assistance listings for SWBT and Pacific Bell."<sup>14</sup> SBC adds that it expects the loading of its national database to be completed in February, 2000.

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<sup>11</sup> MCI Telecommunications Corp. v. US WEST Communications, Inc., et al, Memorandum Opinion and Order, File Nos. E-97-40 and E-97-19, DA 99-2479, (rel. Nov. 8, 1999) ("MCI Order").

<sup>12</sup> Id. para.19.

<sup>13</sup> Id.

<sup>14</sup> SBC Supplement, at 2. Pursuant to the NDA Order, US WEST's provision of in-region non-local DA service, albeit an interLATA service, was permitted under section 271(g)(4), the exception for incidental interLATA services. However, the FCC instructed US WEST to cease providing the nation wide component of its service until it provides such service using its own information storage facilities. NDA Order, paras. 23-24 and 63.

Excell submits that the FCC should seek further clarification and documentation from these companies proving that they are the current rightful owners of the information storage facilities they use to provide national DA.<sup>15</sup> SBC's statement that it signed a contract "to purchase and fully own" Nortel's facilities indicates that something remains to be done before SWBT and Pacific Bell become the rightful owners of the information storage facilities used in the provision of their non-local DA services. These BOCs should be required to answer the question of whether or not they are the current owners of the information storage facilities used in the provision of their national non-local DA services. Because this remains an open question, Excell urges the FCC to determine, as it did in the MCI Order, that SWBT and Pacific Bell have been or will be in violation of section 271 of the Act the entire time they provided or provide the nation wide component of their DA service using information storage facilities owned by other entities.<sup>16</sup>

In conclusion, Excell submits that although the SBC Supplement adds new information to the record, such information does not bring SBC into compliance with the conditions set forth in the NDA Order. The SBC BOCs do not meet these conditions and the general requirements of forbearance in part because they discriminate between themselves and unaffiliated entities in

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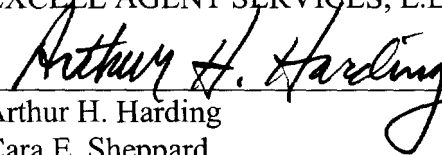
<sup>15</sup> One way to gain assurance of ownership is to have SWBT and Pacific Bell submit the contract they executed with Nortel.

<sup>16</sup> MCI Order, para 17.

their provision of DA listings and have not demonstrated any intent to model their behavior according to standards prescribed by the NDA Order. The SBC Supplement merely reconfirms the fact that the SBC BOCs have been providing non-local DA services in violation of section 272 for specific periods of time and that, with respect to SWBT and Pacific Bell, have not reconfigured the manner in which they provide nationwide DA to comply with section 271(g)(4).

Respectfully submitted,

EXCELL AGENT SERVICES, L.L.C.

A handwritten signature in black ink, reading "Arthur H. Harding", is written over a horizontal line.

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December 17, 1999

**CERTIFICATE OF SERVICE**

I, Tonya Y. VanField, hereby certify that a copy of the foregoing Comments to SBC's Clarification and Supplement to its Petition for Forbearance for National Directory Assistance Service in CC Docket No. 97-172 was served this 17th day of December, 1999, via hand delivery, and first-class mail upon the following:

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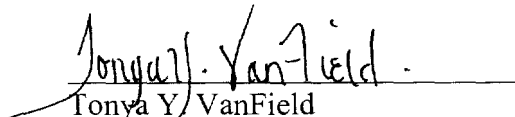
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